

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ONLINE MERCHANTS GUILD,)	
)	
Plaintiff,)	
)	
vs.)	No. _____
)	
C. DANIEL HASSELL,)	
SECRETARY OF REVENUE,)	
DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

Declaration of J. Scott Moody

1. My name is J. Scott Moody. I am over the age of 18, and I am under no legal disability that would prevent me from offering the following testimony. I make this declaration on personal knowledge of the matters discussed herein.

2. I am a member of the Online Merchants Guild and an online merchant.

3. I am a resident of New Hampshire. I conduct e-commerce business in the United States using a New Hampshire company. Neither I, nor my business, is based in Pennsylvania.

4. I supply goods to Amazon's store as part of Amazon's Fulfilled by Amazon ("FBA") program. Amazon controls the storage and shipment of goods in

the FBA program. If Amazon accepts a listing I propose for sale in Amazon's store, Amazon will tell me which Amazon location to ship the goods to using pre-printed labels. Once Amazon takes possession of goods, Amazon will redistribute them around the country within the network of Amazon fulfillment centers. I do not know why Amazon chooses to store or move particular goods to particular locations around the country.

5. I cannot tell Amazon where to warehouse, or not warehouse, goods that Amazon has accepted for sale in its store. Nor can I tell Amazon to ship items or not ship items to customers in specific states.
6. Sometimes Amazon directs me to send goods to Amazon in Pennsylvania. Typically, Amazon will move goods around from there. Regardless, Amazon controls those choices.
7. From the perspective of merchants like me, Amazon is a single national, if not international, marketplace. The only way to participate in Amazon's FBA program is to participate on Amazon's terms. FBA is critical to being "Prime-eligible," which is itself critical because consumers strongly tend to prefer "Prime" items.
8. Recently, I received a letter from the Pennsylvania Department of Revenue, which is attached hereto. The letter asserts that I may owe Pennsylvania sales and income tax because Amazon may have chosen to store goods I

supplied to Amazon in Amazon's warehouses in Pennsylvania. As explained above, any such storage would have been Amazon's decision, not mine. The letter indicates that, unless I quickly register with the Department of Revenue, the agency will increase the number of tax years at issue. Although the letter presents registration as a sort of "amnesty" to lessen tax exposure, the actual meaning of the letter is something I interpret as a threat—that the state will seek enhanced "punishment" if I do not comply. I say punishment because if the Department of Revenue wants taxes on Amazon sales, it should seek those funds from Amazon, not from small business owners like me who do not control Amazon's storage choices or tax strategy.

9. The Department of Revenue's demands are burdening my participation in interstate and international commerce. For one thing, I do not have tax money that Amazon failed to collect on sales in Amazon's store, so I would have to pay any such sums from my own pocket. For another thing, complying with the tax laws of multiples states is a significant financial and administrative burden for a small business like mine, particularly when states retroactively change the "rules."
10. It would likely not make economic sense for me to challenge any tax assessment in Pennsylvania's tax system because the legal and accounting

fees would likely be more than the amount of any refund. I would be throwing good money after bad.

11. The Department of Revenue also asserts that I would not be eligible for the Commonwealth's *Wayfair* threshold because Amazon may have stored goods I supplied to Amazon's store in Amazon's Pennsylvania warehouses. Not only did I not make those storage decisions, but depriving me of *Wayfair*'s protections will exacerbate the problem the Supreme Court seemed to be worried about—*i.e.*, imposing large burdens on small e-commerce companies. Without those protections, small businesses like mine will be burdened, which will only benefit larger companies while depriving people like me of the economic opportunities that e-commerce offers.
12. In addition to Pennsylvania, I am aware that other states (for example, California, Massachusetts, Washington, Wisconsin, and others) are seeking to collect Amazon's back taxes from FBA merchants and also deprive us of *Wayfair*'s protections. The seller community is full of stories of merchants who have received surprise, business-crushing tax bills. Businesses like mine cannot operate in such an environment of uncertainty and arbitrary demands, which are harming my ability to maintain and grow my business during already difficult economic times.
13. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 26, 2021

s/ J. Scott Moody

J. Scott Moody

BUREAU OF REGISTRATION AND TAXPAYER MANAGEMENT
PO BOX 281221
HARRISBURG PA 17128-1221

**BUSINESS ACTIVITIES QUESTIONNAIRE REQUEST**

FPI VENTURES
6 CROMWELL DR
WOODSVILLE NH 03785-1105

REVENUE ID:.....
FEIN:.....
NOTICE NUMBER:.....
MAIL DATE:.....
CASE ID:.....



Dear Taxpayer,

The Pennsylvania Department of Revenue has determined that your business may have a physical presence in the Commonwealth and may be subject to Pennsylvania's income and sales tax laws. The Department of Revenue is currently offering a voluntary compliance program to help certain businesses become compliant with past due tax obligations. This business may be eligible to participate in that program.

Pennsylvania's Tax Reform Code provides that storing property or the property of a representative, including inventory, at a distribution or fulfillment center, or any other location within the Commonwealth, constitutes a physical presence that creates certain tax obligations with Pennsylvania. Income and applicable sales taxes should be reported and remitted to the Pennsylvania Department of Revenue starting with the date that property was first located within the state.

The voluntary compliance program is offering a limited lookback period from Jan. 1, 2019. Businesses that choose to participate in this voluntary compliance program will not be liable for taxes prior to this date. They will also be given penalty relief for any non-compliance for past due tax returns that were not filed and taxes that were not paid.

Why is this business getting this letter?

The department is unable to verify tax registration or tax filings for this business and believes that it may have unpaid tax liabilities in Pennsylvania based on the business' physical presence.

What must a business do to participate in the voluntary compliance program and become compliant?

Complete the enclosed questionnaire and return it to the department within fifteen (15) days from the date of this letter. Alternatively, for your convenience, you may complete the questionnaire securely on our website at www.revenue.pa.gov/baqinv. This office will review the information provided, as well as other available information, to determine if this business may be subject to sales and/or income taxes. Those businesses that are determined to be subject to Pennsylvania taxes will be registered and notified of their collection and filing obligations.

If the business would like to register to begin collecting Pennsylvania sales tax, complete the online application at www.pa100.state.pa.us. It is important to enter a business start date of Jan. 1, 2019 on the PA-100 and complete Section II of the enclosed questionnaire.

The business may also be required to report and pay Pennsylvania income tax. The type of filing is based on the business' structure or filing election.

Could Pennsylvania's economic presence law apply to these businesses?

The sales tax economic presence law enacted in Act 13 of 2019 (See 72 P.S. § 7202 et seq.) applies only to those businesses with no physical presence in Pennsylvania. If this business has property or inventory located within Pennsylvania, it does not fall under the provisions of these laws.

What happens if the department is unable to verify compliance?

Failure to provide the information requested will result in additional enforcement actions and the business will forfeit any penalty relief or limited lookback provisions provided by the voluntary compliance program.

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How do I submit the completed Business Activity Questionnaire?

The questionnaire should be completed and submitted to the department by either email at **ra-rv-brtm-discovery@pa.gov** or fax at 717-425-2952.

Who do I contact with questions?

If you have any questions or concerns about this notice, you can contact the Discovery Division at 717-772-2960, Option 1 for Nexus. You can also email questions and the completed questionnaire to the department at **ra-rv-brtm-discovery@pa.gov**. You should reference your case number or Revenue ID number when contacting this office.

Enclosures

REVENUE ID: 2245243924

CASE ID: 300000280719

INSTRUCTIONS:

Complete all sections of the Business Activity Questionnaire and Email to ra-rv-brtm-discovery@pa.gov or Fax to (717) 425-2952.

SECTION I		BUSINESS INFORMATION	
Legal Name:			Telephone Number:
Business Location Street:		City:	State: Zip:
Tax ID Number:	Tax ID Type: <input type="checkbox"/> Federal Entity Identification Number (FEIN) <input type="checkbox"/> Social Security Number (SSN) <input type="checkbox"/> Individual Taxpayer Identification Number (ITIN)		
Enter the following information for Owners, Officer, Partners or other Responsible Parties: (Use a separate sheet of paper if additional space is needed.)			
Name:		Title:	SSN/ITIN:
Mailing Address:		City:	State: Zip:
Name:		Title:	SSN/ITIN:
Mailing Address:		City:	State: Zip:
Name:		Title:	SSN/ITIN:
Mailing Address:		City:	State: Zip:
Business Entity Type: <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Sole-Proprietor <input type="checkbox"/> S-Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other: _____			
How is the entity treated for Federal purposes? <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole-Proprietor			
What Federal form was filed with the IRS in 2019? <input type="checkbox"/> Corporate Return (1120) <input type="checkbox"/> Partnership Return (1065) <input type="checkbox"/> Sole-Proprietor (1040) <input type="checkbox"/> Other: _____ <input type="checkbox"/> None			
Is the entity already registered with the Pennsylvania (PA) Department of Revenue? <input type="checkbox"/> Yes* <input type="checkbox"/> No * If Yes, enter the Revenue ID Number: _____ Or, enter an Account ID: _____			
Section II		NEW PA REGISTRATION (Online PA100 can be found at www.pa100.state.pa.us)	
As a result of this communication has the business completed the PA100? <input type="checkbox"/> Yes, the business has registered under the Revenue ID indicated on the form or has added additional taxes to an existing Revenue ID. <input type="checkbox"/> No, the business is already registered and/or filing appropriately. <input type="checkbox"/> No, the business did not complete the PA100 and the business is not registered with the PA Department of Revenue.			
Section III		BUSINESS ACTIVITY (Use a separate sheet of paper if additional space is needed.)	
Describe the business's activity including products and services provided to PA customers:			



Does this business store property or inventory in PA?☐ Yes*☐ No

* If Yes, enter the date the business began storing property in PA: _____

Sales to PA customers are made by: (Mark all that apply.)☐ This Business☐ Marketplace Facilitator☐ Other*☐ Not Applicable

* If Other is selected, provide an explanation in Section IV, Business Information for Other.

Enter the value of property or inventory in PA during 2019: \$**Enter the amount of gross sales to PA customers in 2019: \$****Enter the amount of taxable sales to PA customers in 2019: \$****Taxable Services and Products:** For information regarding PA taxable products and services, refer to the PA Retailer's Information Guide, REV 717 available on the Department's web site at www.revenue.pa.gov.**SECTION IV****MARKETPLACES AND OTHER BUSINESS INFORMATION** (Use a separate sheet of paper if additional space is needed.)**Marketplace Facilitator:**

FEIN/ITIN:

Street:

City:

State:

Zip:

Telephone Number:

Website:

If this marketplace/retailer is a foreign business entity, enter their US location or affiliation if known:

Affiliated Business Name:

Street:

City:

State:

Zip:

Marketplace Facilitator:

FEIN/ITIN:

Street:

City:

State:

Zip:

Telephone Number:

Website:

If this marketplace/retailer is a foreign business entity, enter their US location or affiliation if known:

Affiliated Business Name:

Street:

City:

State:

Zip:

Other* Name:

FEIN/ITIN:

Street:

City:

State:

Zip:

Telephone Number:

Website:

* If sales are made by Other selected above in Section III, provide an explanation:

Section V**BUSINESS'S ONLINE STORES****Provide the web address(es) for any of this business's own websites:****Section VI****BUSINESS REPRESENTATIVE**

Representative Name (Printed):

Title:

Email:

Signature:

Date:

Telephone Number: